

June 5, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Natural Resources & Parks (DNRP), Water and Land Resources Division,
file no. **E06CT085**
Proposed Ordinance No. **2007-0166**

Open Space Taxation (Public Benefit Rating System)
Application of
D'ARCY & GINA MARCELL
30928 – 177th Avenue Southeast
Auburn, Washington 98092

Location of Property: 30928 – 177th Avenue SE
Auburn, Washington

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve 9.75 acres for 40% of market value
Department's Final:	Approve 9.75 acres for 40% of market value
Examiner:	Approve 9.75 acres for 40% of market value, with conditional allowances for administrative approval of additional acreage and/or reduction of market value percentage

PRELIMINARY REPORT:

The Department of Natural Resources & Parks, Water and Land Resources Division Report on item no. E06CT085 was received by the Examiner on April 11, 2007.

PUBLIC HEARING:

After reviewing the report and examining available information on file with the application, the Examiner conducted a public hearing on the application as follows:

The hearing on item no. E06CT085 was opened by the Examiner on April 18, 2007, in the Hearing Examiner's Conference Room, 400 Yesler Way, Room 404, Seattle, Washington, and continued to May 16, 2007, when it was closed. The hearing was reopened on May 30, 2007, by Examiner order to obtain clarification of the department recommendation on two issues.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owners: D'Arcy and Gina Marcell
30928 – 177th Avenue SE
Auburn, WA 98092

Property location: Same as above

PBRS categories requested: **Open space resources**
Active or passive recreation area
Aquifer protection area
Equestrian-pedestrian trail linkage
Forest stewardship land
Significant wildlife or salmonid habitat
Watershed protection
Bonus categories
Resource restoration
Public access – unlimited access
Easement and access

Categories recommended: **Open space resources**
Active or passive recreation area (conditional allowance)
Aquifer protection area (contingent)
Equestrian-pedestrian trail linkage (conditional allowance)
Forest stewardship land (contingent)
Rural open space (conditional allowance)
Watershed protection (contingent)
Bonus categories
Public access – unlimited access (conditional allowance)
Easement and access (conditional allowance)

STR: NE 12-21-05
Zoning: RA-5

Parcel no.: 122105-9179
Total acreage: 15.09
Requested PBRS: 10.00
Recommended PBRS: 9.75

(The land area recommended for PBRS enrollment is the entire parcel less the excluded area(s), which is what has been calculated by DNRP. In the event the County Assessor's official parcel size is revised, the PBRS acreage shall be administratively adjusted to reflect that change.)

2. Except as modified herein, the facts set forth in the King County Department of Natural Resources & Parks, Water and Land Resources Division, Preliminary Report for the April 18, 2007, public hearing, the May 16, 2007, supplemental memorandum and testimony received May 30, 2007, are found correct and are incorporated herein by reference. Copies of the department report and supplemental memorandum will be provided with the copies of this report submitted to the King County Council.

The following changes were made to the staff report at hearing:

- A. Page 5, forest stewardship land: The forest stewardship plan should be implemented and approved by August 1, 2007.
3. Timely application was made to King County for current use valuation of the subject property to begin in 2008. Notice of the application was given as required by law.
4. The property contains priority open space resources and is currently eligible for a total award of 15 points under the King County Public Benefit Rating System. The resulting current use value therefore would be 40% of market value for 9.75 acres of the property.
5. Credit for the forest stewardship land, aquifer protection area and watershed protection area categories is contingent as follows:
 - A. Forest stewardship land – approval and implementation of the Applicants' forest stewardship plan by August 1, 2007.
 - B. Aquifer protection area – approval and implementation of the forest stewardship plan to include reforestation of the critical aquifer recharge area.
 - C. Watershed protection area – approval and implementation of the forest stewardship plan to include reforestation of at least 25% (3.78 acres) of the property.

Failure to qualify for any of these categories will reduce the point total by 5 points each with the current use valuation being adjusted accordingly.

6. Additional credit may be awarded administratively for the active or passive recreation area, public access – limited access, equestrian-pedestrian trail linkage, rural open space and easement and access categories if the following requirements are met:
 - A. Active or passive recreation area and Public access – unlimited access categories – Applicant submittal by September 1, 2007, of letters from users outside the immediate neighborhood indicating past, present and likely future use of the

Applicants' property to access the BPA power line easement for trail use.¹ Award for these categories would add 5 points each to the total point award.

- B. Equestrian-pedestrian trail linkage – evidence of an approved and recorded trail easement. Credit for this category cannot overlap with the easement and access category. Award for this category would increase the point total by 35 points.
- C. Rural open space – reforestation of 10 or more acres of the pasture.² Credit for this category would add 5 points to the total point award and increase the enrolled acreage to a minimum of 10 acres.
- D. Easement and access – evidence of an approved and recorded conservation easement. Credit for this category cannot overlap with the equestrian-pedestrian trail linkage category. Award for this category would increase the point total by 35 points.

Award of any of these categories would increase the point total as noted above, with the current use valuation adjusted accordingly. Award of the rural open space category would necessarily increase the enrolled acreage to a minimum of 10 acres.

CONCLUSION:

1. Approval of current use valuation of 40% of market value (or as little as 10% if approved as noted above) for 9.75 acres (or more if approved as noted above in Finding 6) of the property pursuant to the Public Benefit Rating System adopted by Chapter 20.36 KCC, would be consistent with the purposes and intent of King County to maintain, preserve, conserve and otherwise continue in existence adequate open space lands and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of King County and its citizens.

¹ Several nearby property owners attended the April 18, 2007 hearing session to express a number of concerns about use of the subject property, one of which is the possibility of trail users to be undesirably drawn to use a private road (Southeast 311th Street and then 178th Place Southeast) which provides access to their properties (and also to the currently used driveway to the subject property). The neighbors are of the opinion that trail use would not be an allowed use of the private road. But the Applicants' intended trail access onto the subject property is instead via the public road 179th Avenue Southeast, which terminates at the property's south boundary line toward its eastern end, almost as distant as possible from the neighbors' properties as possible. Alleged trespass use of the private road and/or misuse of the private road by one of its owners is not a matter directly relevant to the application before the Examiner and would be a matter of civil dispute, the resolution of which lies in some other forum.

² The neighboring property owners allege that the subject property was logged illegally and therefore should not receive a taxation benefit from reforestation. DNRP staff testified and offered a supplemental staff memorandum at the May 16, 2007 hearing session reporting that indeed the property had been cleared without a proper Forest Practices Act (FPA) permit, and was required to be reforested, but that the state Department of Natural Resources had decided not to pursue enforcement of such issues. DNRP is therefore of the opinion that a public benefit is accordingly gained by encouraging reforestation by awarding a corresponding tax reduction credit (which would be withdrawn if the property is not reforested as required by the PBRs program). The Examiner finds DNRP's reasoning acceptable under the circumstances.

RECOMMENDATION:

APPROVE current use valuation of 40% of market value (or as little as 10% if approved as provided below) for 9.75 acres (or more if approved as provided below) of the subject property, subject to the conditions recommended in the Department of Natural Resources & Parks report for the April 18, 2007, public hearing and the following additional conditions and conditional allowances of approval:

- A. Credit for each of the forest stewardship land, aquifer protection area and watershed protection area categories is contingent upon meeting the pertinent conditions stated in Finding no. 5 above. Failure to qualify for any of these categories will reduce the point total by 5 points each with the current use valuation for the enrolled portion of the property adjusted accordingly.
- B. Credit may be awarded administratively for the active or passive recreation area, public access – limited access, equestrian-pedestrian trail linkage, rural open space and easement and access categories if the requirements stated in Finding no. 6 above are met. Award of any of these categories would increase the point total as stated in Finding no. 6 with the current use valuation for the enrolled portion of the property adjusted accordingly, and the enrolled portion possibly adjusted as well.

Current use valuation shall be subject to all terms and conditions of RCW Chapter 84.34 and KCC Chapter 20.36, as may be amended from time to time, and all regulations and rules duly adopted to implement state law and county ordinances pertaining to current use valuation.

RECOMMENDED June 5, 2007.

Peter T. Donahue
King County Hearing Examiner

TRANSMITTED June 5, 2007, to the following parties and interested persons:

D'Arcy & Gina Marcell
30928 – 177th Ave. SE
Auburn, WA 98092

Tim McNeese
17701 SE 311th St.
Auburn, WA 98092

Daniel Van Devender
31011 – 177th Ave. SE
Auburn, WA 98092

Susan Monroe, Department of Assessments
Ted Sullivan, Dept. of Natural Resources & Parks
Charlie Sundberg, Office of Cultural Resources
Marilyn Cope, KCC – Committee Staff
Bill Bernstein, Dept. of Natural Resources & Parks
Sally King, Dept. of Natural Resources & Parks

Gary & Karen Nylund
31010 – 177th Ave. SE
Auburn, WA 98092-6537

**NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED**

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) **on or before June 19, 2007**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before June 26, 2007**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council is final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

**MINUTES OF THE APRIL 18, MAY 16 AND 30, 2007, PUBLIC HEARINGS ON DEPARTMENT OF
NATURAL RESOURCES & PARKS FILE NO. E06CT085:**

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Ted Sullivan representing the Department, and Tim McNeese, Gary Nylund and Daniel Van Devender.

The following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 *Not submitted*
- Exhibit No. 2 *Not submitted*
- Exhibit No. 3 *Not submitted*
- Exhibit No. 4 DNRP Preliminary Report to the Hearing Examiner
- Exhibit No. 5 Affidavit of Publication

- Exhibit No. 6 Notice of hearing from the Hearing Examiner's Office
- Exhibit No. 7 Notice of hearing from the PBRS/Timber program
- Exhibit No. 8 Legal notice and introductory ordinance to County Council
- Exhibit No. 9 Application and signed/notarized affirmation
- Exhibit No. 10 Assessor's map
- Exhibit No. 11 King County Assessor's database printout
- Exhibit No. 12 Arcview and orthophoto/aerial map
- Exhibit No. 13 Letter to neighbors re: notification of PBRS application
- Exhibit No. 14 *Not submitted*
- Exhibit No. 15 *Reserved for future submission of* legal description of area to be enrolled
- Exhibit No. 16 Letter to applicant re: received application and approval schedule
- Exhibit No. 17 Survey document depicting easements, dated October 8, 1980
- Exhibit No. 18 Covenants, conditions and restrictions for short plat no. 630043

The following exhibits were offered and entered into the record on May 16, 2007:

- Exhibit No. 6A Notice of Hearing continuance
- Exhibit No. 19 Memo from Ted Sullivan dated May 16, 2007

PTD:ms
E06CT085 RPT

Attachment

This document is provided for information only. DO NOT complete and return. A completed copy will be furnished to the Applicant(s) by the Office of the Hearing Examiner after an application has been approved by the Metropolitan King County Council.

OPEN SPACE TAXATION AGREEMENT

Chapter 84.34 RCW

(To be used for "Open Space", "Timber Land" Classification or "Reclassification" Only)

Property Owner: **XXX**
Property Address: **XXXX**
Granting Authority: **King County, Washington**
Legal Description:

Assessor's Property Tax Parcel or Account Number: **XXX**
Department of Natural Resources & Parks File Number: **E0XXX**
This agreement is between **XXX** hereinafter called the "Owner", and
King County, Washington hereinafter called the "Granting Authority".

Whereas the owner of the above described real property having made application for classification of that property under the provisions of Chapter 84.34 RCW. And whereas, both the owner and granting authority agree to limit the use of said property, recognizing that such land has substantial public value as open space and that the preservation of such land constitutes an important physical, social, esthetic, and economic asset to the public, and both parties agree that the classification of the property during the life of this agreement shall be for:

Open Space Land

Now, therefore, the parties, in consideration of the mutual covenants and conditions set forth herein, do agree as follows:

1. During the term of this agreement, the land shall be used only in accordance with the preservation of its classified use.
2. No structures shall be erected upon such land except those directly related to, and compatible with, the classified use of the land.
3. This agreement shall be effective commencing on the date the legislative body receives the signed agreement from the property owner and shall remain in effect until the property is withdrawn or removed from classification.
4. This agreement shall apply to the parcels of land described herein and shall be binding upon the heirs, successors and assignees of the parties hereto.
5. The landowner may withdraw from this agreement if, after a period of eight years, he or she files a request to **withdraw** classification with the assessor. Two years from the date of that request the assessor shall withdraw classification from the land, and the applicable taxes and interest shall be imposed as provided in RCW 84.34.070 and 84.34.108.
6. After the effective date of this agreement, any change in use of the land, except through compliance with items (5), (7), or (9), shall be considered a **breach** of this agreement, and shall be subject to removal of classification and liable for applicable taxes, penalties, and interest as provided in RCW 84.34.080 and RCW 84.34.108.
7. A **breach** of agreement shall not have occurred and the additional tax shall not be imposed if removal of classification resulted solely from:
 - a) Transfer to a governmental entity in exchange for other land located within the State of Washington.
 - b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power in anticipation of the exercise of such power and having manifested its intent in writing or by other official action.
 - c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the land owner changing the use of such property.
 - d) Official action by an agency of the State of Washington or by the county or city where the land is located disallowing the present use of such land.
 - e) Transfer of land to a church when such land would qualify for exemption pursuant to RCW 84.36.020.
 - f) Acquisition of property interests by State agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 (see RCW 84.34.108(6)(f)).

- g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(e).
 - h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification.
 - i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120.
 - j) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.
 - k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as forest land under chapter 84.33 RCW, or under chapter 84.34 RCW continuously since 1993. The date of death shown on the death certificate is the date used.
8. The county assessor may require an owner to submit data relevant to continuing the eligibility of any parcel of land described in this agreement.
 9. The owner may apply for reclassification as provided in Chapter 84.34 RCW.
 10. This agreement shall supersede any previous open space taxation agreement entered into for the subject property.

This agreement shall be subject to the following conditions:

See attached Hearing Examiner Report and Recommendation

It is declared that this agreement specifies the classification and conditions as provided for in Chapter 84.34 RCW and the conditions imposed by this Granting Authority. This agreement to tax according to the use of the property is not a contract and can be annulled or canceled at any time by the Legislature (RCW 84.34.070).

Granting Authority:

Dated _____

_____ King County, Washington

Council Chair

As owner(s) of the herein-described land I/we indicated by my/our signature(s) that I am/we are aware of the potential tax liability and hereby accept the classification and conditions of this agreement (must be signed by all owners).

Print Name

Signature

Date signed agreement received by Legislative Authority _____

For tax assistance, visit <http://dor.wa.gov> or call 1-800-647-7706. To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users may call 1-800-451-7985.
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